



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD)No.2461 of 2018

Sathiah

Represented by Power of Attorney

Karupaiah

: Petitioner/Petitioner

.. Vs ..

Visalachi

: Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.14 of 2018 in H.M.O.P.No.86 of 2013 on the file of Subordinate Judge, Devakottai.

For Petitioner : Mr.P.M.Vishnuvarthanan

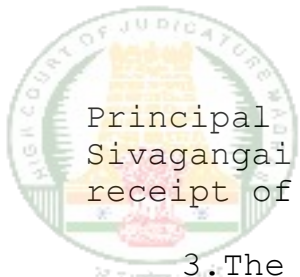
For Respondent : Mr.C.Arulvadivel @ Sekar

- - - -

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.14 of 2018 in H.M.O.P.No.86 of 2013 on the file of the Sub Court, Devakottai.

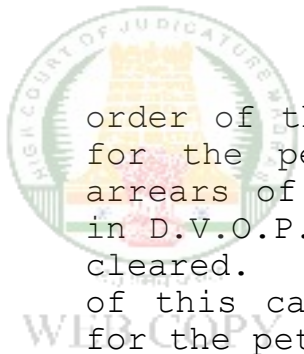
2.The husband, who is the petitioner in H.M.O.P.No.86 of 2013 pending before the Sub Court, Devakottai, is the revision petitioner. The revision petitioner filed H.M.O.P.No.86 of 2013 for dissolution of the marriage that was solemnised between the petitioner and the respondent. The ground for dissolution of marriage between the petitioner and the respondent is mental cruelty. It is admitted that during the pendency of the petition for divorce in H.M.O.P.No.86 of 2013, the wife has preferred a petition before the Judicial Magistrate, Karaikudi, in M.C.No.8 of 2017 under Section 125 of Cr.P.C. for maintenance. The learned Judicial Magistrate, Karaikudi, passed an order for maintenance directing the revision petitioner to pay monthly maintenance. In the petition filed by the wife for seeking transfer of proceedings namely M.C.No.8 of 2013 pending on the file of the learned Judicial Magistrate, Karaikudi and C.C.No.271 of 2013 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Karaikudi, Sivagangai, a direction has been issued to the husband to deposit the arrears to the tune of Rs.1,60,000/- before the learned



Principal District Munsif-cum-Judicial Magistrate, Karaikudi, Sivagangai District within a period of one week from the date of receipt of copy of the order.

3.The learned Counsel appearing for the petitioner states that the entire arrears have been paid as on date and no amount is due to comply with the direction of this Court. The revision petitioner/husband says that he was working in abroad and that therefore, the petition in H.M.O.P.No.86 of 2013 was dismissed for default on 21.04.2014. The petitioner filed I.A.No.14 of 2018 to condone the delay of 1192 days in filing the petition to restore the proceedings in H.M.O.P.No.86 of 2013, which was dismissed for default on 21.04.2013. The said petition was dismissed as the inordinate delay was not properly explained. The petitioner/husband came up with a plea that he could not appear for the enquiry in view of his employment in Singapore and that he came to know about the order dismissing the petition only when he returned and met his Counsel. The lower Court was of the view that mere residence of the petitioner in abroad is not a ground to condone the inordinate delay of 1192 days. Further, the lower Court has also observed that the document filed by the petitioner, namely, the xerox copy of the passport and flight ticket would not disclose that the petitioner was in abroad from 2014 till he presented the petition under Section 5 of the Limitation Act. It is not in dispute that the petitioner was not available in India when the petition in H.M.O.P.No.86 of 2013 was dismissed for default. The petitioner has specifically stated that he came to know about the dismissal of the petition only when he returned to this country and met his Counsel. There is nothing on record to indicate that the petitioner was very much available in this country when the proceedings in H.M.O.P.No.86 of 2013 was dismissed for default. It is not the case of the respondent that the petitioner did not take steps to restore the proceedings immediately after he returned to India from abroad. In such circumstances, this Court is unable to sustain the order dismissing the petition by holding that the residence of petitioner abroad during the specific period is not a ground to condone the inordinate delay of 1192 days. This Court, of course, has to see the inconvenience or hardship that was caused to the wife. The petition for divorce was filed in the year 2013. Further, it is stated that the respondent wife has obtained an order of interim maintenance in a proceedings initiated under Section 125 of Cr.P.C.. The learned Counsel appearing for the respondent further stated that the revision petitioner also suffered an order whereby he was directed to pay additional amount by way of compensation apart from the monthly maintenance that was directed in M.C.No.8 of 2013. According to the respondent, the revision petitioner is in arrears to the tune of Rs.3,10,000/- as per the proceedings in M.C.No.7 of 2013 and D.V.O.P.No.8 of 2017.

4.The learned Counsel appearing for the revision petitioner states that the arrears of maintenance as per the earlier



order of this Court has been settled in full, The learned counsel for the petitioner further states that if the petitioner is in arrears of any amount as per the earlier order of the Court either in D.V.O.P.No.8 of 2017 or M.C.No.7 and 8 of 2013, such dues will be cleared. This Court, having regard to the facts and circumstances of this case and the submissions of the learned Counsel appearing for the petitioner, is convinced that the petitioner should be given an opportunity to prosecute the petition in H.M.O.P.No.86 of 2013 on merits. Therefore, considering the fact that the petitioner has valid explanation for his non-appearance and the delay of 1192 days is inordinate, this Court is inclined to allow this Civil Revision Petition on terms. Accordingly, this Civil Revision Petition is allowed and the order passed by the learned Sub Judge, Devakottai in I.A.No.14 of 2018 is set aside. The petition filed in I.A.No.14 of 2018 in H.M.O.P.No.86 of 2013 stands allowed on condition that the petitioner pays all the arrears of maintenance as on date within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the direction found in CrI.O.P.(MD) Nos.19828 of 2015 and 2461 of 2017 and the connected proceedings dated 30.06.2017 is reported to have been complied with by the revision petitioner. Even if there is any arrears or default in complying with the direction of this Court, the petitioner is directed to comply with the same within a period of eight weeks from today. The petitioner shall pay the amount due, if any, after deducting the amount which he has paid already or deposited as per the direction of this Court in the order dated 30.06.2017 or as per the order directing maintenance.

Sd/-

Assistant Registrar()

//True copy//

/ /2020

Sub Assistant Registrar

To

The Subordinate Judge,
Devakottai.

+1 CC to M/s.C. ARUL VADIVEL @ SEKAR, Advocate (SR-13939[F] dated 13/08/2020)

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-14052[F] dated 14/08/2020)

C.R.P. (MD)No.2461 of 2018

12.08.2020

SRM

SRS/26.08.2020/3P/4C

<https://hcservices.ecourts.gov.in/hcservices/>